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U.S. Department of Homeland Security
Citizenship and Immigration Services

*ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, N.W.
Washington, DC 20536*

File: WAC 02 110 52436 Office: CALIFORNIA SERVICE CENTER Date:

FEB 04 2004

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

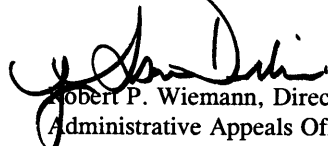
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a distributor of electronic products that seeks to employ the beneficiary as an accountant. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129

and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the I-129 petition, and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: preparing case flow and budgetary projections; analyzing income, expenses, and capital expenditures; analyzing and preparing financial statements; approving accounts payable and validating the accuracy of payroll; developing a computerized accounting system; and developing policies and procedures for budgetary control. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in economics, finance, accounting, commerce, business administration, or its equivalent.

The director found that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that the petitioner's job duties were vague, not explaining day-to-day responsibilities. The director, therefore, concluded that there may not be a bona fide position that qualifies as a specialty occupation or that the beneficiary would perform duties in the position.

On appeal, counsel asserts that the proffered position qualifies as a specialty occupation. Counsel submits a task specific job description of the position, and states that exporting and distributing consumer products involves extensive financial and accounting transactions. Counsel contends that the proposed position - an accountant - requires a bachelor's degree because, to perform the duties of the position, candidates must possess the training that is attained by completing a bachelor's degree in accounting. To prove that a bachelor's degree is the industry standard, counsel cites the 2002-2003 Online Edition of The Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), CareerInfonet, Internet postings, and letters from alleged competitors.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a

particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

Counsel states that the position, an accountant, entails responsibilities that require training that is attained by completing a bachelor's degree in accounting. Counsel's claim is without merit. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is that of an accountant. None of the beneficiary's job duties entails the level of responsibility of an accountant. A careful review of the *Handbook* confirms the accuracy of the director's assessment that the job duties of the proffered position do not require a bachelor's degree. The duties parallel those of financial clerks: bookkeeping, accounting, auditing, procurement, and payroll and timekeeping clerks. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for financial clerk positions. The director concluded properly that the proffered position is not one of an accountant; therefore, it does not require a baccalaureate degree, or its equivalent, in a specific specialty.

To prove an industry-wide requirement of a bachelor's degree, the petitioner submitted information from CareerInfonet, Internet job postings, and letters from alleged competitors. This evidence is not persuasive. The CareerInfonet information relates to accountant and auditor jobs; however, as previously related, the *Handbook* reveals that the duties of the proffered position resemble those performed by financial clerks, not accountants. The Internet postings do not establish an industry-wide degree requirement. The petitioner's organization and its job duties differ significantly from those shown in the Internet job postings. For example, Manpower requires an accountant with property and real-estate accounting experience; American Honda Motor requires experience in not-for-profit and fixed asset accounting; Accountemps seeks a general accountant contractor to assist with a special project for a manufacturing distribution company; LA Financial Agency, a public real estate conglomerate, seeks an accountant; Kaiser Permanente, a healthcare company with 85,000 employees, seeks a staff accountant with knowledge of GAAP and assets/construction accounting; and Spherion, an

international travel company, seeks an accountant. The Internet positions do not reflect parallel positions among similar organizations.

Opinion letters from alleged competitors, E.S.E. Electronics and David Distributing Company, are nearly *verbatim* in expressing their credential requirements for an accountant. Both letters state, with the minor addition of the word "this" to the E.S.E. Electronics' letter, the following:

Accordingly, due to the composite background of [this] electronics establishment, we only employ qualified individuals. Thus, for key positions, our minimum hiring requirements for an [a]ccountant is a bachelor's degree in the related fields.

Given the nearly identical language, the probative value of the letters is highly questionable, bringing into question all evidence in the record.

The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - the employer normally requires a degree or its equivalent for the position. The petitioner states that its hiring policy is to require a bachelor's degree for the accountant job. The petitioner's creation of a position with a bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. Citizenship and Immigration Service (CIS) must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *id.* at 387.

interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388. As already discussed, the proffered position does not require a bachelor's degree.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) - the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.